

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 24614 of 2004

Between:

Bandari Harinath, S/o late Ramulu,
Bhadrachalam, Khammam District.

..... PETITIONER

AND

- 1 Agent to Government, Khammam, Khammam District.
- 2 Chairman, Tobacco Board, Guntur, rep., by Auction Superintendent,
A.P.F.No.9, G.V.Subba Rao, r/o Bhadrachalam.
- 3 The Sub Divisional Magistrate, Mobile Court, Bhadrachalam.
- 4 ITDA Project Officer, Bhadrachalam, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in passing the Impugned Order by fax through the 4th respondent I.A.No.51/2004 in OP No.16/2004 dt.18-12-2004 at the instance of the 2nd respondent while the matter is pending before the Competent Civil Court in O.S.No.244/2004 is illegal, void, arbitrary, and opposed to Articles 14, 19, 21 and 300(A) of Constitution of India and consequently to direct the 3rd respondent to pass the appropriate orders in accordance with law in the suit in question.

Counsel for the Petitioner:MR.MUMMANENI.SRINIVASA RAO

Counsel for the Respondent Nos.1, 3 and 4: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.2: S.VENKAT REDDY, SENIOR COUNSEL

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CONTEMPT CASE NO.343 OF 2005

Between

Bandari Harinath, S/o late Ramulu,
Bhadrachalam, Khammam District.

..... PETITIONER

AND

- 1 Agent to Government, Khammam, Khammam District.
- 2 Chairman, Tobacco Board, Guntur, rep., by Auction Superintendent,
A.P.F.No.9, G.V.Subba Rao, r/o Bhadrachalam.
- 3 The Sub Divisional Magistrate, Mobile Court, Bhadrachalam.
- 4 ITDA Project Officer, Bhadrachalam, Khammam District.

(Respondents 1, 3 and 4 are not necessary parties)

.....RESPONDENTS

Petition under Sections 10 and 12 of the Contempt of Court Act praying this Hon'ble Court to punish the Contemnor/Respondents for willful disobedience of the Hon'ble High Court of A.P. directions passed in W.P.M.P.No.32230 of 2004 in W.P.No.24614 of 2004, dt.20.1.2005.

Counsel for the Petitioner:MR.MUMMANENI.SRINIVASA RAO

Counsel for the Respondent Nos.1, 3 and 4: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.2: S.VENKAT REDDY, SENIOR COUNSEL

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24614 OF 2004, AND

CONTEMPT CASE NO.343 OF 2005

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COMMON ORDER:

The Writ Petition is filed by one Bandari Harinath of Badrachalam feeling aggrieved by the fax message sent by Agent cum District Collector, to the Sub Divisional Magistrate (Mobile Court), Badrachalam. Be it noted that by the said fax message first respondent directed the third respondent to send the record regarding to the proceedings in O.S.No.244 of 2004 pending on the latter's file. The order/fax message is impugned on the ground that the same is arbitrary and is one without application of mind.

The controversy raised in the Writ Petition may be appreciated by briefly referring to the facts. The petitioner is allegedly in occupation of land admeasuring Acs.9.00 in S.No.5/1 of Purushothampatnam Village, Badrachalam Mandal. Claiming that he has been in occupation for a long period he unsuccessfully made attempts to get patta under the provisions of A.P.Scheduled Areas Ryotwari Settlement Regulation, 1970. Be that as it is, when the petitioner was unsuccessfully making attempts to get his alleged possession of the land regularized, Sri Seetharamachandra Swamy Vari Devasthanam (hereafter called, the temple), who also claimed ownership of the land and also got patta to the land, sold away to the extent of Acs.4.50 in S.No.5/1 of Purushothampatnam after following the procedure under law. Be it also noted that the Tobacco Board, second respondent purchased the said land for construction of tobacco auction platform. After taking possession of the land, second respondent statedly constructed auction platform. The petitioner herein filed O.S.No.244 of 2004 on the file of third respondent for permanent injunction. In the said suit he alleged that Tobacco Board is unlawfully interfering with the possession of the petitioner. He also filed an interlocutory application in the said suit for ad interim injunction pending the suit. It appears, the powers under A.P.Agency Rules were conferred on

the third respondent only till 31.9.2004. Any order that might have been passed by third respondent thereafter after the said date would have been void order. Therefore, second respondent, who was arrayed as sole defendant in O.S.No.244 of 2004 filed an application before first respondent seeking transfer of the said suit from the file of third respondent to any other competent Sub-Divisional Magistrate (Agency Court) having jurisdiction to entertain the suits. Second respondent also prayed for stay of all proceedings in O.S.No.244 of 2004 pending consideration of Transfer Petition. First respondent did not pass any *ex parte* order of stay, but thought it fit to peruse the records. Therefore he issued impugned order directing third respondent to send records which was communicated by fax message.

This Court while admitting the Writ Petition on 29.12.2004 initially did not pass any *ex parte* order. However, on 20.5.2005 by order made in W.P.M.P.No.32230 of 2004, passed interim orders to the effect that petitioner shall not be evicted by the respondents from an extent of Acs.5.33 in S.No.5/1 of Purushothampatnam, if he is in possession of such extent of land. Alleging that respondents violated the orders by trying to interfere and disturb petitioner's possession, petitioner came forward with a contempt case being C.C.No.343 of 2005. The same was listed before this Court on 6.6.2005, and with the consent of the both the learned counsel for the parties, the Writ Petition and the Contempt Case were heard together and are being disposed of by this common order.

Learned counsel for the petitioner, Sri M.Srinivasa Rao vehemently contends that when a Transfer Petition was moved it was always open to the Agent to stay proceedings before the Sub-Divisional Magistrate, but without application of mind it was not proper for the first respondent to summon records. According to the learned counsel for the petitioner, as records were summoned by first respondent, proceedings before the third respondent have come to a standstill and third respondent did not even pass order in the interlocutory application filed by petitioner in O.S.No.244 of 2004 nor fixed any dates for hearing of the suit or petitions. He further submits that the District Collector is the authority to ratify the sale of the land by the temple in favour of second respondent and having done so, he could not have entertained application filed by second respondent for transfer of the suit from the file of third respondent.

Learned Senior Counsel Sri S.Venkat Reddy, appearing for second respondent, placed reliance on the report of the Mandal Revenue Officer, Badrachalam, dt.19.1.2005 addressed to the first respondent and submits that petitioner was never in possession of the land comprised in S.Nos.5/1 of Purushothapatnam Village and therefore he has no *locus standi* to maintain the suit as well as the Writ Petition. Secondly, he would urge that second respondent having purchased the land from the temple has already constructed tobacco platform. The Settlement Officer gave patta in favour of temple after conducting thorough enquiry and the appeals as well as the writ petitions filed by rival claimants are already dismissed by this Court. The petitioner fabricated adangals in collusion with the Gram Panchayat Secretary and filed the same in the suit on the file of Sub Divisional Magistrate (Mobile Court) which was initially constituted for a period of one year in 1990 and later the term was extended from time to time. As the term expired on 30.9.2004 and suit filed by

petitioner is before a forum without jurisdiction, Tobacco Board filed an application being O.P.No.16 of 2004 under Rule 11 of A.P.Agency Rules, 1924 (for short, the Agency Rules) seeking transfer of the suit from the file of third respondent. When the Tobacco Board filed I.A.No.51 of 2004 for stay of proceedings, first respondent thought it fit to summon the record to satisfy himself, and there is no illegality in the same.

Learned Government Pleader for Social Welfare submits that the Government extended the time of the third respondent by orders made in G.O.Rt.No.902, dt.18.5.2005 for a period of four months from 1.4.2005 to 31.7.2005. In that view of the matter he would urge that relief prayed in the Writ Petition itself does not survive. He also submits that the petitioner's claim under Regulation 2 of 1970 was rejected by all the authorities as well as this Court and therefore petitioner is not entitled to any relief.

Whether or not Writ Petition in the factual ground as above is maintainable, the controversy is in a narrow compass and need not detain this Court longer. When Rule 11 of the Agency Rules empower the Agent to the Government, first respondent herein, to transfer any original suit pending in another Court within agency area and transfer to another agency court, the Agent is essentially exercising appellate jurisdiction. Be it noted, by reason of Rule 47(2) of the Agency Rules, Agent to the Government is constituted as second appellate authority and therefore it has to be held that the Agent to the Government has got incidental powers while dealing application for transfer of land under Rule 11. This power also includes to call for the records of the lower Court to satisfy himself as to the truth or otherwise of the allegations made in the Transfer Petition. Indeed, if the Agent transfers a matter from one Sub-Divisional Magistrate to another Sub-Divisional Magistrate, merely on a petition filed under Rule 11 of the Agency Rules, without anything more, such an order may be prone for criticism that it was passed without application of mind and without verifying the record. This Court, therefore, rejects the submission of the learned counsel for the petitioner, that summoning of the record is not warranted. Though a submission is made that there is a real apprehension of bias on the part of first respondent in summoning the record, to say the least this has not been properly substantiated nor has been argued to its logical end. The mere submission of a ground across the Bar would not be of any avail to the learned counsel for the petitioner. Be that as it is, merely because in another capacity the District Collector has ratified the sale made by the temple, in favour of second respondent, it cannot be said there is a likelihood of bias especially when the interest that can be attributed to the District Collector is non-pecuniary interest (See **Manak Lal v. Dr. Prem Chand and State of Punjab v. V.K.Khanna**). There is yet another ground for not accepting the Writ Petition. There is a categorical statement made in the counter affidavit filed by Agent. After perusing the record sent by third respondent, first respondent returned the record to third respondent, who received the same on 3.1.2005. Therefore, there is no hurdle for the third respondent passing orders as he deems fit on the interlocutory application as well as the suit filed by petitioner.

The Writ Petition is wholly devoid of merit and is accordingly dismissed with costs quantified at Rs.5,000/- (Rupees five thousand only). As the Writ Petition itself is dismissed, the Contempt Case is also dismissed.

(V.V.S.RAO, J)

8.6.2005

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Note:CC in one week.

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To

1 Agent to Government, Khammam, Khammam District.

2 Sri G.V.Subba Rao, Auction Superintendent,
A.P.F.No.9, r/o Bhadrachalam, rep. by Chairman, Tobacco Board,

Guntur

3 The Sub Divisional Magistrate, Mobile Court, Bhadrachalam.

4 ITDA Project Officer, Bhadrachalam, Khammam District.

5 2 CCs to G.P. for Social Welfare, High Court Bldgs., Hyderabad (OUT)

6 2 CD copies